

Notice

The Montgomery Circuit, Superior and County Courts have published proposed modifications and additions to local rules, which may be examined in the office of the Clerk of Montgomery County, on the Clerk's website (www.montgomeryco.net), and on the Indiana Judicial website (www.in.gov/judiciary/rules/local).

Comments may be submitted by the bar and public until May 1, 2005. Comments should be sent to the Honorable David A. Ault, Montgomery Superior Court, 100 E. Main Street, Crawfordsville, Indiana 47933, or by facsimile to 765-364-6465, or by e-mail to judge.ault@montgomeryco.net.

Proposals will be adopted, modified or rejected by July 15, 2005.

The effective date of the proposed rules shall be January 1, 2006.

Local Criminal Rules

LR54-CR2.2-1	Case Assignment
LR54-CR2.3-2	Transfer
LR54-CR2.2-3	Refiling and Subsequent Filings
LR54-CR13-4	Reassignment
LR54-CR13-5	Appointment for Special Judge
LR54-CR00-6	Discovery
LR54-CR00-7	Bond Schedule
Criminal Appendix A	Discovery Order
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Criminal Appendix C	No Contact Notice

~~LOCAL CRIMINAL RULE 1~~
~~LR54-CR2.2-1~~

Case Assignment

A. All misdemeanor, traffic, infraction and ordinance violation cases shall be assigned to the Montgomery County Court.

B. All Class D felony cases, all cases for nonsupport of a dependent child, and all misdemeanor cases with enhanced penalties or which have accompanying habitual offender affidavits shall be assigned to the Montgomery Superior Court.

C. All Class B and Class C felony cases shall be assigned to the Montgomery Circuit Court.

D. All Class A felony and murder cases shall be assigned on an alternating basis to the Montgomery Circuit Court and the Montgomery Superior Court, with such cases to alternate between courts so that such offenses which occurred in ~~July, 1995~~ odd-numbered months shall be filed in Circuit Court, and such offenses which occurred in ~~August, 1995~~ even-numbered months shall be assigned to Superior Court, ~~and to alternate thereafter in a like manner. In order to account for any seasonal or cyclical patterns that may emerge, the months shall alternate in succeeding years so that in calendar year 1996, such cases for July, 1996, shall be assigned to Superior Court and cases for August, 1996, shall be assigned to Circuit Court, and alternating thereafter in a like manner in the subsequent months and years.~~

E. To promote judicial economy, the foregoing assignment of cases among the three courts shall be modified with respect to offenses arising out of the same or related incidents in which litigation is pending, such as an invasion of privacy or

intimidation charge, so that the new charge may be filed in the court in which the related litigation is pending, or the related litigation may be transferred to the court in which the ~~greater~~ higher charge may be pending, depending on which court has jurisdiction to hear the charged offense, even though such assignment would not otherwise comply with this rule. ~~In addition,~~

F. ~~W~~Where a lesser charge is filed which would be a violation of probation or grounds upon which to consider revocation of a bond, the lesser charge may be filed with the court in which the former charge was filed, even though such assignment would not otherwise comply with this rule.

~~LOCAL CRIMINAL RULE 2~~
LR54-CR2.3-2

Transfer

The judges of the Montgomery Circuit, Superior and County Courts, by appropriate order entered in the Record of Judgment and Orders, may transfer and reassign any case to any other court of record in the county with jurisdiction to hear the charged offense, subject to acceptance by the receiving court.

~~LOCAL CRIMINAL RULE 3~~
LR54-2.2-3

Refiling and Subsequent Filings

When the State of Indiana dismisses a case and chooses to refile that case, the case shall be assigned to the court designated ~~by Local Criminal Rule 1~~ under the local criminal rule on Case Assignment. ~~In the event that~~ If additional charges are filed against a defendant subsequent to the assignment of the

case, all such additional charges to be resolved in conjunction with the pending case shall be assigned to the court in which the original case is pending, unless such court does not have jurisdiction to hear the highest charged offense, and provided that if the additional charges are higher than Class D felonies they shall not be filed in County Court.

~~LOCAL CRIMINAL RULE 4~~
LR54-CR13-4

Reassignment

A. The following ~~individuals have agreed to~~ judges shall serve in the event it becomes necessary to reassign a felony or misdemeanor case in the Montgomery County Court: the Honorable Gregory J. Donat of the Tippecanoe County Court No. 1, the Honorable David A. Ault of the Montgomery Superior Court, the Honorable Kathy R. Smith of the Clinton Superior Court, and the Honorable Thomas K. Milligan of the Montgomery Circuit Court.

B. The following ~~individuals have agreed to~~ judges shall serve in the event it becomes necessary to reassign a case in the Montgomery Circuit Court: the Honorable Susan Orr Henderson of the Fountain Circuit Court, the Honorable Matthew Kincaid, of the Boone Superior Court No. 1, the Honorable Peggy Q. Lohorn of the Montgomery County Court, and the Honorable David A. Ault of the Montgomery Superior Court.

C. The following ~~individuals have agreed to~~ judges shall serve in the event it becomes necessary to reassign a case in the Montgomery Superior Court: the Honorable Susan D. Henderson of the Fountain Circuit Court, the Honorable Matthew Kincaid, of the Boone Superior Court No. 1, the Honorable Peggy Q. Lohorn of the

Montgomery County Court, and the Honorable Thomas K. Milligan of the Montgomery Circuit Court.

D. By order of adoption of these rules, the Indiana Supreme Court, pursuant to I.C. ~~33-2.1-7-8~~ 33-24-6-10, temporarily transfers the above named judges to the Montgomery Circuit, Superior and County Courts for the purpose of reassignment of felony or misdemeanor cases. In the event it becomes necessary to reassign a felony or misdemeanor case, the judges will be reassigned in the order in which the above named judges are listed.

~~LOCAL CRIMINAL RULE 5~~
LR54-CR13-5

Appointment of Special Judge

In the event no judge is available for assignment or reassignment of a felony or misdemeanor case, such case shall be certified to the Indiana Supreme Court for appointment of a special judge. In the event the judge presiding in a felony or misdemeanor case concludes that the unique circumstances presented in such proceeding require appointment by the Indiana Supreme Court of a special judge, such judge may request the Indiana Supreme Court for such appointment.

LR54-CR00-6

Discovery

The Circuit, Superior and County Courts have adopted a standard order for exchange of discovery materials between the State and the Defense. The order is incorporated in these rules as Criminal Appendix A.

LR54-CR00-7

Bond Schedule

The Circuit, Superior and County Courts have adopted a Bond Schedule governing the amount and conditions of bail in criminal cases. This schedule is incorporated in these rules as Criminal Appendix B.

CRIMINAL APPENDIX A

STATE OF INDIANA)		IN THE MONTGOMERY	COURT
)	SS:		
COUNTY OF MONTGOMERY)		CAUSE NO.	
THE STATE OF INDIANA)			
)			
vs.)			
)			
)			

ORDER ON DISCOVERY

1. State Disclosure:

The State shall disclose to the Defense the following material and information within its possession or control within 10 days.

- (a) The names, last known addresses, and telephone numbers of persons whom the State may call as witnesses, together with their relevant written or recorded statements.
- (b) Any written or recorded statements and the substance of any oral statements made by the accused or by a co-defendant, and a list of witnesses to the making and acknowledgment of such statements.
- (c) A transcript of those portions of grand jury minutes containing testimony of persons whom the Prosecuting Attorney intends to call as witnesses at the hearing or trial, as designated by the Defense after listening to the recording of the testimony.
- (d) Any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons.
- (e) Any books, papers, documents, photographs or tangible objects which the Prosecuting Attorney intends to use in the hearing or trial or which were obtained from or belong to the accused.
- (f) Any record of prior criminal convictions which may be used for impeachment of the persons whom the State intends to call as witnesses at the hearing or trial.
- (g) Any evidence which tends to negate the guilt of the accused as to the offense charged or which would tend to mitigate his punishment.
- (h) Transcript of probable cause hearing, if any.
- (i) A list of the dates and times that the accused appeared in any lineups including photographic lineups; the name and addresses of person who appeared or whose picture was used in each of said lineups with the accused; the names and addresses of any persons who viewed the lineups as witnesses or victims, and any written or

recorded statements or any existing summaries or oral statements made by anyone regarding said identification after viewing the lineups.

(j) Any evidence of other crimes, wrongs or acts that the State intends to admit pursuant to Rule of Evidence 404(b).

(k) Any evidence of specific instances of conduct that the State intends to admit pursuant to Rule of Evidence 405(b)

The State may perform these obligations in any manner mutually agreeable to itself and the Defense counselor by notifying the Defense counsel that material and information, described in general terms, may be inspected, obtained, tested, copied, or photographed, at specified reasonable times and places.

2. Defense Disclosure:

The Defense shall disclose to the State the following material and information within its possession or control within 30 days.

(a) The names, addresses and telephone numbers of person whom the Defense may call as witnesses along with a record of prior criminal convictions.

(b) Any books, papers, documents, photographs, or tangible objects which are intended to be used at a hearing or trial.

(c) Any medical or scientific reports relating to the accused or to any evidence which may be used at a hearing or trial.

(d) Any defenses, procedural or substantive, which the Defense intends to make at a hearing or trial.

3. Limitations:

(a) Discretionary Protective Order. The Court may deny disclosure if it finds that there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from such disclosure which outweigh any usefulness of the disclosure to counsel.

(b) Matters not subject to disclosure:

(1) Work product. Disclosure is not required of legal research or of records, correspondence, reports or memoranda to the extent that they contain the opinions, theories, or conclusions of the State or members of its legal or investigative staffs, or of Defense counsel or his staff.

(2) Informants. Disclosure of an informant identity will not be required where there is a paramount interest in non-

disclosure and a failure to disclose will not infringe the
constitutional rights of the accused. Disclosure of the
identity of witnesses to be produced at a hearing or trial
will be required.

(3) Any matters protected by law.

4. Continuing Discovery and Sanctions:

(a) Discovery is a continuing Order through trial.

(b) No written motion is required except to compel discovery, for a
protective order, or for an extension of time.

(c) Failure of either side to comply with this Order within 10 days
before trial may result in exclusion of evidence at trial or
other appropriate sanction.

Judge

CRIMINAL APPENDIX B

BAIL BOND SCHEDULE

A. Conditions of Bond.

All bail bonds posted by defendants are subject to the following conditions:

- (1) Defendant shall appear in Court at all times required by the Court;
- (2) Defendant shall not leave the State of Indiana without the prior written consent of the Court;
- (3) Defendant shall not commit or be arrested for another criminal offense.
- (4) Defendant shall keep his attorney and the Court informed in writing of any change of address within 24 hours of such change; and
- (5) any other condition ordered by the Court.

Violation of any condition may result in revocation of bond and issuance of an arrest warrant.

B. OWI and Controlled Substance offenses.

The following offenses shall require a cash only bond in the amount of \$800; no surety bonds will be permitted unless ordered by a judgment of the Circuit, Superior or County Court.

- (1) OWI offenses:

Operating With .08 BAC, I.C. 9-30-5-1(a)
Operating With .15 BAC, I.C. 9-30-5-1(b)

Operating With Controlled Substance I.C.
9-30-5-1(c)
Operating While Intoxicated, I.C. 9-30-5-2
Operating With .08 BAC, .15BAC, Controlled
Substance or While Intoxicated [as Class
D Felony], I.C. 9-30-5-3
Operating With .08 BAC, .15 BAC, Controlled
Substance or While Intoxicated, Causing Serious
Bodily Injury, I.C. 9-30-5-4

(2) Controlled Substances offenses:

Dealing in Schedule V Controlled Substance,
I.C. 35-48-4-4(a) [Class D Felony]
Dealing in a Substance Represented to be a
Controlled Substance, I.C. 35-48-4-4.5
Possession of a Substance Represented to be
Controlled Substance, I.C. 35-48-4-4.6(b)
[Class C or A Misdemeanor]
Dealing in a Counterfeit Substance, I.C.
35-48-4-5 [Class D Felony]
Possession of a Narcotic Drug, I.C. 35-48-4-6(a)
[Class D Felony]
Possession of a Controlled Substance, I.C. 35-48-
4-7 [except on school bus or within 1,000' of
school, park, etc., as Class C Felony]
Manufacture of Paraphernalia, I.C. 35-48-4-8.1
Possession of Paraphernalia, I.C. 35-48-4-8.3
Dealing in Paraphernalia, I.C. 35-48-4-8.5
Dealing in Marijuana, Hash Oil or Hashish, I.C.
35-48-4-10 [except as Class C Felony, -
10(b)(2)]
Possession of Marijuana, Hash Oil or Hashish,
I.C. 35-48-4-11
Visiting or Maintaining a Common Nuisance, I.C.
35-48-4-13
Offenses Relating to Registration Labeling and
Prescription Forms, I.C. 35-48-4-14 [except as
Class C Felony, -14(c-d)]
Possession of Chemical Agents or Precursors With
Intent to Manufacture Controlled Substances,
I.C. 35-48-4-14.5 [except with firearm, Class C
Felony, -14.5(b)(1), -14.5(c)(1-2), -14.5(f)]
or within 1,000' of school, etc.,

C. **Felonies**

<u>Offense</u>	<u>Surety Bond</u>	<u>Cash Bond</u>
Murder	No Bond	No bond
Class A	\$50,000	\$10,000
Class B	\$10,000	\$5,000
Class C	\$ 4,000	\$1,000
Class D	\$ 2,000	\$500
Habitual Offender	\$30,000	\$5,000
Failure to Appear	Hearing Required	

D. **Misdemeanors**

<u>Offense</u>	<u>RESIDENT</u>		<u>NONRESIDENT</u>	
	<u>Surety</u>	<u>Cash</u>	<u>Surety</u>	<u>Cash</u>
Class A	\$1,500	\$300	\$2,500	\$500
Class B	\$1,000	\$200	\$2,000	\$400
Class C	\$1,000	\$200	\$1,000	\$200
Failure to Appear	Hearing Required			

E. If a person arrested on a misdemeanor charge is unable to post bond after the expiration of 48 hours in custody, the sheriff may release the person subject to his written promise to appear in court.

F. Motion for Bond Reduction and Property Bond.

All pre-trial motions for bond reduction or requests for approval of property bond shall be presented to the Court in writing and shall be scheduled for hearing upon proper notice to the Prosecuting Attorney.

G. Multiple Charges.

This bond schedule shall apply to the highest charge pending against a person if multiple charges are or may be filed. If the listed bond amount is inappropriate under the circumstances, the Prosecuting Attorney shall bring such circumstances to the attention of the Court by written motion.

H. Arrest While on Probation, Parole or Bond.

This bond schedule shall not be used for nor be applicable in the case of a person who has been arrested for a crime while on probation or parole. In such case, the person may be detained for a maximum period of 15 calendar days, during which period the Prosecuting Attorney shall notify the appropriate parole or probation authority, and the Court shall determine the proper amount of bond, if any. The Montgomery County Police Department may authorize transfer of persons held on petitions to revoke or modify probation to the Work Release Facility subject to court approval.

I. No Contact Conditions

Pursuant to I.C. 35-33-8-3.2(a)(4), a person who is arrested for any of the offenses listed below shall be held for 12 hours before release from custody, unless released sooner pursuant to a court order. The release of such person on bail shall be conditioned upon the person having no direct or indirect contact with the alleged victim or any other individual involved in the circumstances of the offense while the charge or case is pending. During regular court business hours the Prosecuting Attorney shall petition a Judge for such no-contact order. If a no-contact order is needed at times other than regular court business hours, the Prosecuting Attorney or the Sheriff may contact a Judge and request release of the arrested person on bond or an oral authorization for a no-contact order, which shall be reduced to a written no-contact order and submitted to the Judge on the next business day of the Court. The person to be released shall be notified of the no-contact condition of the bond and the oral authorization therefor by a letter from the Sheriff with receipt acknowledged by the person, in substantially the form set forth in the attached Appendix C.

The applicable offenses are as follows:

I.C. 35-42-2-1	Battery
I.C. 35-42-2-1.3	Domestic Battery
I.C. 35-42-2-1.5	Aggravated Battery
I.C. 35-42-2-2	Criminal Recklessness/Hazing
I.C. 35-42-2-3	Provocation
I.C. 35-42-2-6	Battery by Bodily Waste
I.C. 35-42-3-2	Kidnapping
I.C. 35-42-3-3	Confinement
I.C. 35-42-3-4	Interference With Custody
I.C. 35-42-4-1	Rape
I.C. 35-42-4-2	Criminal Deviate Conduct
I.C. 35-42-4-3	Child Molesting
I.C. 35-42-4-3	Child Exploitation
I.C. 35-42-4-5	Vicarious Sexual Gratification
I.C. 35-42-4-6	Child Solicitation
I.C. 35-42-4-7	Child Seduction
I.C. 35-42-4-8	Sexual Battery
I.C. 35-42-4-9	Sexual Misconduct
I.C. 35-43-2-1.5	Residential Entry
I.C. 35-43-2-2	Criminal Trespass
I.C. 35-45-2-1	Intimidation
I.C. 35-45-2-2	Harassment
I.C. 35-45-2-5	Interference With Reporting a Crime
I.C. 35-45-4-5	Voyeurism
I.C. 35-45-9-4	Criminal Gang Intimidation
I.C. 35-45-10-5	Stalking
I.C. 35-46-1-15.1	Invasion of Privacy
I.C. 35-46-1-3	Incest
I.C. 35-46-1-4	Neglect of a Dependent
I.C. 35-47-4-3	Pointing a Firearm

J. Application of Bond to Judgment

If a judgment for a fine, court costs, restitution or other amounts is entered against a defendant in a case in which a cash bond is posted, the balance of the cash deposit (less the fees retained by the Clerk) may be applied by the Court to the payment of the judgment.

CRIMINAL APPENDIX C

(letterhead of)

SHERIFF OF MONTGOMERY COUNTY, INDIANA

DATE:

TO:

By order of _____, Judge of the Montgomery Circuit/Superior/County Court, you are hereby notified that you are released from the custody of the Sheriff of Montgomery County, Indiana, on this date, on bond authorized upon the condition that **you shall have no contact, whether direct or indirect, with the following persons:**

while the charge(s) or case against you is (are) pending. **THIS ORAL ORDER OF THE JUDGE IS EFFECTIVE IMMEDIATELY.** A written order shall be issued by the Court on its next business day.

Dennis L. Rice
Sheriff of Montgomery County

By _____
(signature of officer)

(printed name)

RECEIPT AND ACKNOWLEDGMENT OF NO-CONTACT ORDER
AS A CONDITION OF RELEASE ON BAIL

The undersigned hereby acknowledges the receipt of a copy of the foregoing notification that a **NO-CONTACT ORDER** has been issued as a condition of release of the undersigned on bail and agrees to have no contact as ordered.

Received on _____, _____, at _____ .m.

(_____)